

IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF ALABAMA

Tony Fountain #152157

Plaintiff,

Civil Action No: 2:06-CV-548-  
-MHT

VS.

DR. PEASANT, et al,  
Defendants.

Exhibit-101

AFFIDAVIT OF PLAINTIFF IN  
OPPOSITION TO DEFENDANTS SPECIAL  
REPORT

My name is Tony Fountain, the affiant(s) in the above styled cause, I'm over 21 years of age and can testify to the facts herein in any Court of law. And the facts set forth herein are true and correct to the best of my knowledge and belief. This is my response to defendants Forniss, warden and DR. PEASANT affidavits of 10-30-06 (MR. Forniss). Plaintiff stress the facts that defendants, Forniss stated in his affidavit that "I received an eye examination on November 3 2006." I never received an eye examination on November 3, 2006, just as I have been told on 10-31-05 that the chart was missing/lost, with the exception of 12-13-05. Some-time shortly after I filed this complaint and the doctor order of 8-18-06 my name

have appeared once on a Chronic Care list for an Eye examination, and again when I arrived at the Health Care Unit I was told ~~the~~ <sup>the</sup> Chart was missing and that it was no where to ~~be~~ <sup>be</sup> found. In which they stated that in the Records; but Dr. Peasant and his attorney's and agents working in direct <sup>contact</sup> with him have deliberately deleted and/or omitted it from the record and as of this date I have been told it hadn't arrived ~~as~~ <sup>as of</sup> of this date. (Eye Chart)

Plaintiff, stress the facts that his Medical Files are in the care and possession of the defendants, whom can add or delete anything they want to from it regardless if it true or not. And that the defendant submitted Exhibit - C + D are prime examples of this. The defendant's Exhibit - C contradicts their Exhibit marked as D. In which defendant(s) Forniss stated in his affidavit (on page 2) "he received an Eye Examination <sup>on</sup> November 3 2006". I never had an Eye Examination on 11-3-05, in which I assumed Warden, Forniss made his assessment on the basis of the documents submitted by Dr. Peasant marked as their Exhibit - C. That states "last Eye examine, 12-22-04, 00 20/25, 05 20/25, 04 20/25". plaintiff point out the facts that their Exhibit - D contradicts (Health Examination form) Exhibit - C. In which Exhibit - D shows my Eye examines 40 days later as being "20/20, 00 20/20, 05 20/20 on".

The defendants Exhibit-D was Conducted doing an annual physical Check-up. And is supported by documents that reads "Kitchen Clearance, notification of next of kin" that follows Exhibit-D (I assume they are part of defendants Ex. -D). I was told on 10-31-05 that the Eye Chart was not available and have been told the same thing as of this date that the Eye Chart was missing. And that one had been ordered. also (see Nursing Evaluation too).

2). Plaintiff, contends that its very IRONIC that nurse Ellis didn't give the Reading of the most recently Eye examine Result of December 13, 2005 (def't. Ex.-D) instead he gave a November 3 2005 Reading which was never Conducted on me. (def't. Ex. -C) Because his Response to Warden, Thomas inquiry Shows he Stated my eye Visions as being 20/25 instead of 20/20. (see plaintiff, Ex. A or B attached to his Complaint). And that defendants, Forniss have talked with me on more than one occasion, concerning Calls he Received from my Family's Complaining about my Condition of See Blood in my stool, and he would call me to the common area. MR. Forniss Ensured me that he would look into it (my Complaints), I informed <sup>him</sup> myself verbally, through Family's and written Complaints. I had also spoken to his assistance, Warden Thomas about my symptoms and calls from my Family's. In which

both warden, Forniss and his assistance Thomas informed me personally of the phone calls they both received from my family's. Inquiring about my medical condition and the constant delay in diagnosing and treating my <sup>TD</sup> symptoms. I also alerted them to my medical problems through hand written complaints submitted on March 20, 2006 April 7, 2006 and May 26 2006. In which the defendants have found it necessary to omit from the record before the court (their Exhibit's - A-1) I am attaching my complaint of May 26, 2006 along with the grievances that was attached to it that was forward to the Health care unit. (original grievances). The defendants (Health care unit) failed to comply with their own policy, procedure by responding within three (3) day's of the filing and appealing my first to grievances. NOR did warden, Forniss and his agents didn't bother to reply. (see, plaintiff Exhibit-501).

3). Affiant, further stress the facts that the simple reading of an eye chart is useless in detecting certain type of eye problems. Such as you have some "people who are nearsightedness who can see nearby objects clearly; but have trouble seeing objects that are far way." "Nearsightedness is caused by an eyeball that is too long. which light rays are brought into focus in front of the retina, rather than on it." See (Texas Edition prentice Hall, Health, Skills, For wellness, Pg's. 428) I suppose that the type of visions that most meet the defendants, Forniss and Dr. Pearson

PROTOCOL OF 20/40 vision. Then you have people's who are Farsightedness, a <sup>(T.D)</sup> ~~poor~~ person who is farsighted can see faraway objects clearly; but can not see nearby objects well. Farsightedness is caused by an eyeball that is too short, focusing light rays behind the Retina (Texas Edition, supra). plaintiff, stress the facts that a normal reading of an Eye Chart Eye examine is unusually, placed some 15 to 20 feet away from the person who are being examined. It's possible that I can be one of those Farsightedness individuals, which explain my inability to read material in front of me such as books, letters, Court orders, newspapers ect.... And if this the case it will contradict both defendants, Forniss and Dr. Pearson affidavits and nurse Ellis Response of 4-11-06 mentioning my visions as being 20/25 and 20/20 (def't. Ex. -D). Then you have people who are Astigmatism (uh stig Muh ziz um) or distorted vision. This is caused when the curvature of the Cornea or the lens is uneven light rays entering the eye can not be focused at a single point on the Retina. In which Eyeglasses or contact lenses can correct nearsightedness, Farsightedness and Astigmatism. (see, Texas Edition)

4) plaintiff stress the facts the defendants have been acting with deliberate indifference toward my visions problems By failing to diagnose and treat my visions problems in violation of Estelle v. Gamble 429 US 97 at 104 (1976).



The afore said informations of farsightedness, nearsightedness and astigmatism would show it impossible for the defendants inhouse eye examinations to be accurate when especially considering farsightedness vision. Plaintiff, contends if the Court or anyone can place any reading materials before him they would instantly conclude that more testing would be required to, diagnose and treat my vision's problem and that the Court can observe my demeanor in such manner. And when I'm attempting to read the light reflects off the paper, pages cause me to squint my eye's in order to make out the words. It also cause me headaches and my eye's to run water and to itch. I'm forced to go in borrow another inmates glasses in order to respond to this Court order, Research case law, Read letters from home ect. - - - Plaintiff stress the facts that nurse Ellis response to the inquiry of the warden, SS't. Thomas on 11-31-05 and 40 days later it 20/20. What would be the purpose of keep signing up, when they are not conducting the eye examines and lying about the reading.

In Opposition To Defendants  
Dr. peasant. Affidavit

Concerning My Symptoms

First, I point out the fact that Dr. peasant and his agents records have my date of birth wrong in which I have informed them on numerous occasions of my correct date of birth 8-24-62

instead of 8-26-63. I was forty-three and not forty-two when Dr. peasant was seeing me and/or over my medical needs. (Reported my symptoms of seeing blood in my stool). On my visit to the health care unit on April 25, 2006, I informed Dr. peasant that not only was I bleeding I was also having problems such as constipation. And as of this date I'm still have constipation problem although I have not notice any blood in my stool since my colonoscopy examine of November 8 2006. Plaintiff stress the facts that Colon and Rectal Cancers are the second most common type of fatal cancers after lung cancers. And that the warnings signs include bleeding from the rectum, blood in feces, along with changing bowel habits. Also that Evidence suggest that bowel cancer may be linked to diets that are high in fat and low in fiber. Early detection depends on each person being alert to these warning signs and other unusual symptoms that was mentioned above. (Information, Medical, came from, Texas Edition, Prentice Hall Health, Skills for Wellness, pgs. 584-587). Plaintiff point out the facts that two polyps was removed from his colon and that the doctor performing the colonoscopy say it (polyps) was the cause of the symptoms I was experiencing of seeing blood. And that polyps form into cancers if left undetected, affiants also stress the point that "deliberate Indifference" is also shown by the failure of the defendants to provide proper diet such as fresh fruits, vegetables along with

Whole grain products. Which would prevent such forming of prostate and colon cancers. (Texas, Edition pgs. 587). The defendants don't serve such fresh vegetable, fruits ect-- in our day to day meals. They don't have such preventive measures, policy in place within the Alabama Prison Systems which contributed to my symptoms. Plaintiff also point out the facts that he have been experiencing shortness of breath after his ~~col~~ <sup>TF</sup> Colonoscopy Examines of November and that he still constipated as of this day. The shortness of breath occur after I have exercised, such as walking and push-ups. Therefore I had to discontinue my exercise routine. I have reasons to believe the shortness of breath is associated with the medicine given prior to the colonoscopy or the HCTZ Blood pressure medicine or the Cholesterol medication I'm taking. I afraid of going to the Health care unit only to have go through the same old thing of taken legal action against them in order to make them treat me. This also support in the case Fountain v. State 648 So.2d. 591 concerning my back injury that ~~part~~ <sup>TF</sup> the defendant submitted file. Plaintiff stress the facts that the defendants in their agents have been acting with "deliberate Indifference" toward him since his incarceration, and have reasons to believe they have invidious discriminated against ~~do~~ to his conviction (nature of). Opinion of The Justice 410 So.2d. 60 at 62. It's also apparent from the answer/response of Dr. peasant attorney silent plea

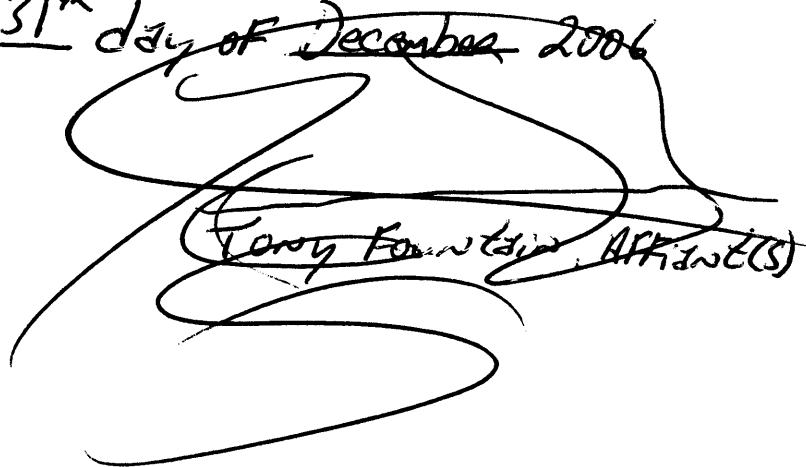


For this Court sympathy when that stated "who was convicted of the kidnapping and rape of a minor female" on page 3 of their answer. (Def't. Ex. 2 Henderson Medical Records MMP 1-2 Basic Service profile report). Plaintiff, stress the facts that whole conviction and sentence are solely based off un-corroborated testimony of a 15 year old female (see Exhibit of plaintiff marked as Ex. 502) This Evidence was withheld along with the victim age (true) through-out my trial. And was not discovered until 1999 through Federal discovery on a writ of Habeas. For un-corroborated testimony see Code of Ala. 13A-6-44 <sup>commentary</sup> ~~commentary~~ Comments pgs. 402. Also withheld was Forensic Evidence of Hair sample taken from myself and off the victim that shows it was not match. In other words plaintiff, this same information relied upon by the defendants attorney to silent plea, whatever treatment I received from the Health unit that I deserve. This is also support by Fountain v. State 648 So.2d. 591, the only way I can get the defendants to treat me is to take legal action.

2). Plaintiff, also stress the facts that the defendants raised an affirmative defense of administrative Exhaustion which they failed to prove. Wyatt v. Terhune 315 F.3d. 1108 at 1119 (9th Cir. 2003), see also Green v. J.K. Schwartz, P.J. Doe enms 138 Fed. Appx. 184; 2005 US App. Lexis 11593, no. 04-1300. They failed to prove I didn't Exhaust my administrative Remedies, by not showing the authenticity of document (see Ex. D of def't. access to care form) nor did they make reference to it in their affidavits as of this date.

Although they submit a access to care form in their answer (Ex. D of dep't's) which shows what steps plaintiff had to follow in order to appeal his grievance, They don't put forth any evidence that plaintiff didn't follow such procedure in the form of Affidavit or other. Nor is Administrative Exhaustion under 42 U.S.C.S. 1992c(e) is jurisdiction to bar the Court from review. *Nyhuis v. Reno* 204 F.3d 65, 69 n.4 (3d Cir. 2000). Anything further your Affiant SAYA Nought!

Done on this 31<sup>st</sup> day of December 2006

  
Tony Fontana, Affiant(s)

AFFIRMED AND SUBSCRIBED  
BEFORE ME, James H. Lumbard  
ON THIS 31<sup>st</sup> DAY OF December 2006  
MY COMMISSION EXPIRES:  
1/25/08 Elmer, AL.

## CERTIFICATE OF SERVICE

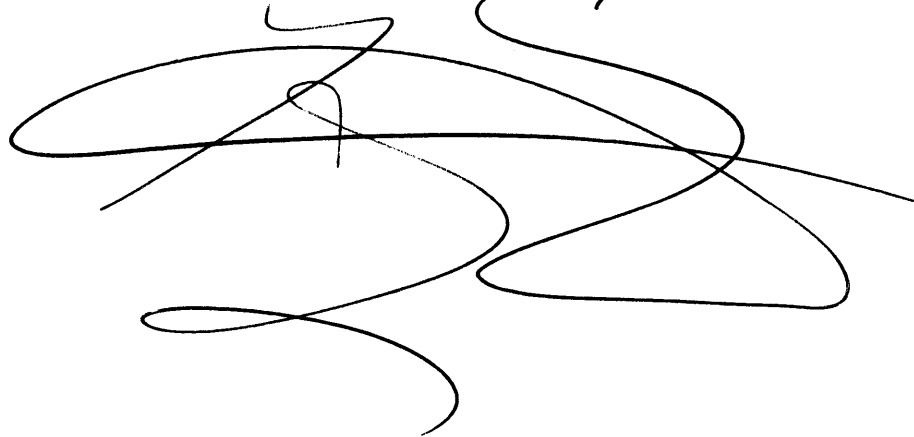
I, hereby, Certify, that I have served a true and correct copy of the foregoing as Addressed:

OFFICE OF THE Attorney General  
11<sup>th</sup> South Union Street  
Montgomery, Al. 36130

to  
Porter Field, Harper, Mills & Mottlow, P.A.  
22 INVERNESS CENTER PARKWAY  
Suite 600  
P.O. Box 530790  
Birmingham, Al. 35253-0790

by placing the same in the U.S. Mail on this 3<sup>rd</sup>  
day of January 2007, prepaid. (Certified mail)

Sincerely

A large, stylized handwritten signature in black ink, consisting of several loops and a long horizontal stroke.